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2016 MAY 17 PM 12:49

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY acc DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

March 2015 Grand Jury

UNITED STATES OF AMERICA,

Case No. 16CR10931

Plaintiff,

I N D I C T M E N T

v.

Title 18, U.S.C.,

BRIAN KELLY,

Sec. 2252(a)(2) - Receipt of Image of
Sexually Explicit Conduct; Title 18,
U.S.C., Sec. 2252(a)(4)(B) -
Possession of Matters of Minors
Engaged in Sexually Explicit Conduct;
Title 18, U.S.C., Sec. 2253(a) and
(b) - Criminal Forfeiture

Defendant.

The grand jury charges:

Count 1

On or about January 12, 2015, within the Southern District of California, defendant BRIAN KELLY, did knowingly receive a visual depiction, that is a digital and computer image, to wit:

File Name	Description
1421058756007_temp.jpg	This image depicts a minor female, bent over on her knees with the reflection in a mirror displaying her genitalia in a lewd and lascivious manner.

using any means and facility of interstate and foreign commerce and that has been mailed, shipped and transported in and affecting interstate and foreign commerce, and which contains materials which have been mailed, shipped and transported in interstate and foreign

1 commerce, by any means including by computer, the production of which
 2 involved the use of a minor engaging in sexually explicit conduct, as
 3 defined in Title 18, United States Code, Section 2256(2), and which
 4 visual depictions were of such conduct; in violation of Title 18,
 5 United States Code, Section 2252(a)(2).

6 Count 2

7
 8 From a time unknown through on or about January 28, 2015, within
 9 the Southern District of California, defendant BRIAN KELLY did
 10 knowingly possess one or more matters, that is a Samsung Android
 11 phone containing digital and computer images which contained visual
 12 depictions that had been mailed, shipped and transported in
 13 interstate and foreign commerce by any means including by computer,
 14 the production of which involved the use of a minor engaging in
 15 sexually explicit conduct, as defined in Title 18, United States
 16 Code, Section 2256(2), and which visual depictions were of such
 17 conduct; in violation of Title 18, United States Code,
 18 Section 2252(a)(4)(B). The Samsung Android phone contained the
 19 following images:

File Name	Description
2015-01-09-22-06-08.jpg	This image depicts the lewd and lascivious display of a minor female with a flashlight inserted in her vagina.
2015-01-09-22-06-16.jpg	This image depicts the back side of a naked minor female displaying her genitals in a lewd and lascivious manner.

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FORFEITURE ALLEGATIONS

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2 1. The allegations contained in Counts 1 and 2 of this
3 Indictment are realleged and by their reference fully incorporated
4 herein for the purpose of alleging forfeiture to the United States of
5 America pursuant to the provisions of Title 18, United States Code,
6 Section 2253(a).

7 2. Upon conviction of one or more of the offenses alleged in
8 Counts 1 through 3, which involve violations of Title 18, United
9 States Code, Sections 2251(a), 2252(a)(2) and 2252 (a)(4), defendant
10 BRIAN KELLY shall forfeit to the United States, pursuant to Title 18,
11 United States Code, Section 2253(a) all right, title and interest in:

12 a. any visual depictions described in section 2252, and
13 any matter which contains any such visual depictions;

14 b. any property, real or personal, constituting or
15 traceable to gross profits of the offense; and

16 c. any property, real or personal, used or intended to be
17 used to commit or to promote the commission of said offense,
18 including but not limited to the following personal property:

19 i. Any and all images of child pornography, as
20 defined in Title 18, United States Code, Section 2256;

21 The property to be forfeited includes, but is not limited to:
22 one SAMSUNG Smart Phone; an Apple MacBook Pro Laptop Computer; and a
23 DELL Laptop Computer.

24 3. If any of the forfeitable property described above in
25 Paragraph 2, as a result of any act or omission of the defendant:

26 a. cannot be located upon the exercise of due diligence;

27 b. has been transferred or sold to, or deposited with, a
28 third party;

1 c. has been placed beyond the jurisdiction of the Court;
2 d. has been substantially diminished in value; or
3 e. has been commingled with other property which cannot
4 be subdivided without difficulty; it is the intent of the United
5 States, pursuant to Title 18, United States Code, Section 2253(b)
6 which incorporates the provisions of Title 21, United States Code,
7 Section 853(p), to seek forfeiture of any other property of the
8 defendant up to the value of the forfeitable property described above
9 in Paragraph 2.

10 All pursuant to Title 18, United States Code, Section 2253(a) and
11 (b).

12 DATED: May 17, 2016.

13 A TRUE BILL:

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17 Foreperson

18 LAURA E. DUFFY
19 United States Attorney

20 By: 
21 KATHLEEN J. O'HARA
22 Special Assistant U.S. Attorney

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